

#### REMARKS

In the Office Action dated June 22, 2009 and marked final, the Examiner rejects claims 1-19 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Additionally, the Examiner rejects claims 1-19 under 35 U.S.C. §103(a) as being unpatentable over Nagaoka et al. (JP 2002-005656) and Fujimoto (JP 2004-346670). With this Amendment, Applicant amends the specification, but does not amend, add or cancel any claim. Following entry of this Amendment, claims 1-19 are pending. Applicant respectfully requests reconsideration of the Application as amended.

Applicant thanks the Examiner for courtesies extended to the undersigned during a telephonic interview on August 17, 2009. During that interview, the Examiner indicated that the rejection of claims 1-19 under 35 U.S.C. §112, first paragraph, should be for a failure to comply with the written description requirement, not the enablement requirement. As such, Applicant will address the rejection as if it had been based on the written description requirement.

In rejecting claims 1-19 under 35 U.S.C. §112, first paragraph, the Examiner asserts there is no description in the specification to support the features “the pitch of the vehicle as being *level or not level*” as described in the claims. Applicant traverses the rejection of claims 1-19 under 35 U.S.C. §112, first paragraph, as the specification does include support for the description of “the pitch of the vehicle as being *level or not level*” as described in the claims. Applicant first points out that **there is no requirement that the specification describe claimed features in the exact same language as used in the claims.** (See M.P.E.P. 2163, which notes that 35 U.S.C. §112, first paragraph, does not include an *in haec verba* requirement). The specification need not explicitly state that the pitch of the vehicle is “level” or “not level” in order to include support for the description of the pitch as being level or non-level as described in the claims. Instead, so long as the specification describes the claimed invention in sufficient detail that one of skill in the art can reasonably conclude that Applicant had possession of the claimed invention, the specification does provide support for the claims, and the rejection can be overcome.

Thus, Applicant traverses the rejection on the basis that one of skill in the art would be able to recognize support for the pitch of the vehicle as being level or non-level in the specification. For example, ¶ [0022] of the specification describes FIG. 3 as including a line 3a showing the pitch of a vehicle. Line 3a includes inflection points when the line 3a crosses the Y-axis. Since the vehicle has zero pitch at the inflection points of line 3a in

FIG. 3, the figure discloses the pitch of the vehicle as being level at the each inflection point of line 3a. At other times, line 3a has a positive or negative value, indicating that the pitch of the vehicle is non-zero and thus that the vehicle is non-level at these times. As a result, FIG. 3 allows one of skill in the art to reasonably conclude that the Applicant had possession of the pitch of the vehicle as being level or non-level as described in the claims.

As another example of the specification including support for the description of the pitch of the vehicle as being level or non-level, the use of the phrases “balanced” and “not balanced” throughout the specification in reference to the pitch of the vehicle enables one of skill in the art to conclude that the Applicant had possession of the pitch of the vehicle as being level or non-level as described in the claims. FIG. 2A is described as showing the vehicle as being “balanced” and one of skill in the art can recognize that the pitch of the vehicle is level in FIG. 2A based on the horizontal orientation of the illustrated vision axis. Likewise, FIG. 2B is described as showing the vehicle in a pitched state, and one of skill in the art can recognize that the vehicle is non-level in FIG. 2B based on the downward angle of the illustrated vision axis. Given the description of the vehicle as being balanced and not balanced in the disclosure, one of skill in the art would recognize that Applicant uses the term “balanced” refers to the vehicle as having a level pitch and that the term “not balanced” refers to the vehicle as having a non-level pitch. As a result, the use of the terms “balanced” and “not balanced” in the specification allows one of skill in the art to reasonably conclude that the Applicant had possession of the pitch of the vehicle as being level or non-level as described in the claims.

Since one of skill in the art would recognize that the specification includes support for the vehicle as being level or non-level, the rejection of claims 1-19 under 35 U.S.C. § 112, first paragraph, is overcome.

Nonetheless, Applicant amends the specification to explicitly describe the pitch of the vehicle as being level when curve 3a shown in FIG. 3 is at its inflection point and as being non-level when curve 3a has some magnitude. These amendments do not introduce new matter, as the amendments merely explicitly describe features already disclosed. For example, as explained above, one of skill in the art can recognize that FIG. 3 discloses the vehicle as being level when curve 3a intercepts the Y-axis, indicating that the pitch value is zero, and discloses the vehicle as being non-level when curve 3a is not on the Y-axis, indicating that the pitch value has a non-zero value. Applicant is willing to consider other language if the Examiner has an alternative suggestion.

Next, the Examiner rejects claims 1-19 under 35 U.S.C. § 103(a) as being unpatentable over Nagaoka et al. and Fujimoto. Applicant submits herewith a translation of the priority document JP 2004-351086 and a certification attesting to its accuracy. With priority perfected to the December 3, 2004 filing date of JP 2004-351086, Fujimoto is no longer available as art under any section of 35 U.S.C. § 102. Since Fujimoto is not available as prior art, the rejection under 35 U.S.C. § 103(a) is overcome.


Entry of this Amendment is respectfully requested under 37 C.F.R. § 1.116 because the rejection based on Fujimoto is the first occasion necessitating that Applicant perfect priority to JP 2004-351086 and its December 3, 2004 filing date. Additionally, no additional search and/or consideration is required because no claim amendments have been made.

It is respectfully submitted that this Amendment traverses and overcomes all of the Examiner's rejections to the Application as originally filed. It is further submitted that this Amendment has antecedent basis in the Application as originally filed, including the specification, claims and drawings, and that this Amendment does not add any new subject matter to the Application. Reconsideration of the Application as amended is requested. It is respectfully submitted that this Amendment places the Application in suitable condition for allowance; notice of which is requested.

If the Examiner feels that prosecution of the present application can be expedited through a conference with Applicant, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

YOUNG BASILE HANLON &  
MACFARLANE, P.C.

  
\_\_\_\_\_  
Evan Macfarlane  
Registration No. 62,716  
(248) 649-3333

3001 West Big Beaver Rd., Ste. 624  
Troy, Michigan 48064-3107